CARL S. MATUSZEK
O. M. HOLLEY

IBLA 84-643 Decided April 16, 1985
84-693

Appeal from decisions of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease applications W-88310 and W-88352.

Affirmed.

1. Oil and Gas Leases: Applications: Drawings

> BLM may properly reject a simultaneous oil and gas lease application where the applicant failed to disclose on Part B of his application form (Form 3112-6a (June 1981)) the identity of the filing service which assisted him in filing the application, in accordance with 43 CFR 3112.2-4. Failure to disclose will be treated as a substantive defect.

APPEARANCES: Carl S. Matuszek and O. M. Holley, pro sese.

OPINION BY ADMINISTRATIVE JUDGE GRANT

Carl S. Matuszek (Matuszek) and O. M. Holley (Holley) have appealed from two decisions of the Wyoming State Office, Bureau of Land Management (BLM), dated May 17, 1984, rejecting their simultaneous oil and gas lease applications, respectively, W-88310 and W-88352. 1/

Appellants' lease applications were drawn with first priority for parcels WY-274 (W-88310) and WY-317 (W-88352), respectively, in the September 1983 simultaneous oil and gas lease drawing. In its May 1984 decisions, BLM rejected appellants' lease applications because Part B of their application forms (Form 3112-6a (June 1981)) failed to reveal the name and address of the filing services which had assisted appellants in the filing of their applications, in violation of 43 CFR 3112.2-4. BLM noted in the decisions for W-88310 and W-88352, respectively, that it had determined that "Oil & Gas Properties" of North Miami, Florida, had assisted Matuszek and that "OMNI International Ltd., Inc.," (Omni) of Hollywood, Florida, had assisted Holley.

1/ Because of the substantial similarity of legal and factual issues involved in these appeals, they have been consolidated sua sponte by the Board for consideration.

In his statement of reasons for appeal, Matuszek contends that he was not aware of the regulatory requirement and, further, that U.S. Western Oil & Gas Corporation (Western Oil & Gas) had "indicated to me in writing * * * that only my name and current date were required on the application." We note that Western Oil & Gas has the same address as the "Oil & Gas Properties" referred to by BLM. Appellant Holley, in his statement of reasons, contends that Omni has informed him that failure to reveal its identity on the application form was a "clerical error" and that it did not intend to fail to disclose.

[1] The applicable regulation, 43 CFR 3112.2-4, provides that: "Any applicant receiving the assistance of any person or entity which is in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program [2/] shall indicate on the lease application the name of the party or filing service that provided assistance." The application form itself provides a space entitled "Filing Service's Full Name, Address and Zip Code (If Applicable)" and instructs applicants that: "If a filing service was used by the applicant in the preparation of this application, enter the name and address of that filing service." Moreover, 43 CFR 3112.5-1(a) provides that any application determined by adjudication as "not meeting the requirements of Subpart 3112 of this title shall be rejected."

In the present case, appellants essentially admit on appeal that they were assisted in their participation in the September 1983 simultaneous oil and gas lease drawing by two filing services 3/ and that they or their filing service inadvertently failed to disclose the identity of the services on their lease applications. This was clearly a violation of 43 CFR 3112.2-4, which requires rejection of the applications under 43 CFR 3112.5-1(a).

Effective August 22, 1983, BLM notified participants in the simultaneous oil and gas leasing program by notice in the Federal Register that it would "strictly enforce the provisions of * * * § 3112.2-4 which pertain to filing assistance" in order to "preserve the integrity of the simultaneous oil and gas leasing program by ensuring against multiple filings on a single parcel as prohibited by amended § 3112.5-1." 4/ 48 FR 37656 (Aug. 19, 1983).

2/ Such a person or entity is defined as

"those enterprises, commonly known as filing services, which sign, formulate, prepare or otherwise complete or file applications for oil and gas leases for consideration. All other services such as general secretarial assistance or general geologic advice whether or not it is specifically related to Federal lease parcels or leasing, are excluded from this definition." 43 CFR 3112.0-5.

3/ Appellants do not present any evidence that either Western Oil & Gas or Omni does not come within the definition of a "person or entity which is in the business of providing assistance to participants in the Federal simultaneous oil and gas leasing program" which is set forth at 43 CFR 3112.0-5.

4/ In addition, BLM stated that it would strictly enforce the provisions of 43 CFR 3112.2-3 for the same reason. 43 CFR 3112.2-3 requires an applicant to disclose the identity of "all other parties who hold an interest * * * in the application, or the lease, if issued."

That latter regulation, 43 CFR 3112.5-1(b), provides in relevant part that any application made in accordance with any agreement, scheme, plan, or arrangement "which gives any party or parties more than a single opportunity of successfully obtaining a lease or interest therein * * * shall be rejected." 5/

It is beyond peradventure that a filing service may have an "[i]nterest" in a lease application or a lease, if issued, as that term is defined in 43 CFR 3000.0-5(1), and that a filing service, by virtue of filing several applications in which it has an interest for a particular parcel, may engage in a prohibited multiple filing. See, e.g., Gordon J. Lindsay, 64 IBLA 279 (1982), and cases cited therein.

The prohibition against multiple filings set forth in 43 CFR 3112.5-1(b), however, is not self-enforcing. BLM is assisted in enforcing this prohibition by the requirements in 43 CFR 3112.2-3 and 3112.2-4 that an applicant disclose the identity of other parties in interest and of filing services. Where an applicant discloses the identity of a filing service, BLM may, consistent with 43 CFR 3102.5, require the applicant to submit "additional information," including a copy of the agreement between the applicant and the filing service, 6/ in order to determine whether the filing service has an interest in the lease application or the lease, if one is issued. 7/ This information, aside from disclosing a violation of 43 CFR 3112.2-3, may then be used to determine whether the filing service has engaged in a multiple filing, in violation of 43 CFR 3112.5-1(b).

It might be argued that BLM could, after a drawing has taken place, require an applicant, selected with priority for a particular parcel, to disclose whether any filing service had assisted him in the preparation of his application, even where none is disclosed. However, this would pose an unnecessary burden on BLM in that it could not simply require disclosure as a condition precedent to participation by anyone in the drawing, but would have to directly contact every applicant selected with priority prior to awarding leases. This would be inconsistent with the Department's commitment to ease the regulatory burden generally, as well as its goals to expedite the processing of lease applications and the issuance of leases. See 47 FR 8544

5/ In addition, 43 CFR 3112.2-1(f) provides that: "No person or entity shall hold, own or control an interest in more than 1 application for a particular parcel."

6/ We note that a prior regulation, 43 CFR 3102.2-6 (1981), required, in part, that an applicant submit a copy of such an agreement with his lease application. See Hal Carlson, Jr., 78 IBLA 333 (1984).

7/ It might be argued that, if the ultimate aim of the disclosure requirement in 43 CFR 3112.2-4 is to determine whether the filing service is another party in interest, the requirement is duplicative of that contained in 43 CFR 3112.2-3. However, we can envision certain circumstances in which the agreement between an applicant and a filing service is devised in such a way that the applicant, in many cases a layman, is unaware that the filing service has an "interest." Thus, the disclosure requirements of the two regulations are mutually reinforcing.

(Feb. 26, 1982). It might be contended that BLM would only contact applicants selected with priority where it has reason to believe that the applicant has been assisted by a filing service and that it could then determine whether the filing service has an interest in the application. However, the fallacy of this response is that it is predicated on the assumption that BLM could discern, in all cases, when applicants have been assisted by filing services. While BLM was able to make the determination in the present case, we are not prepared to assume BLM could discover the existence of filing service assistance in all cases. Moreover, to assume that BLM would be aware when an application selected with priority has been part of a prohibited multiple filing without compelling disclosure of filing service participation on all applications filed with the assistance of a filing service attributes an omniscience to BLM which we also are not prepared to accept. With respect to applicants not selected with priority, BLM would have no leverage to compel disclosure even if it were feasible to contact them all. The only leverage BLM has in the context of a particular drawing is the threat that should an application be selected with priority it will be rejected without exception whenever a necessary disclosure has not been made at the time of the drawing. Thus, we do not view determination of the use and identity of filing services, their possible interest in applications, and potential multiple filings, after a drawing has taken place, as a practical alternative to requiring disclosure in all applications at the time they are filed in accordance with 43 CFR 3112.2-4.

For these reasons, we distinguish the recent case of Conway v. Watt, 717 F.2d 512 (10th Cir. 1983), wherein the court concluded that the Department improperly rejected a simultaneous oil and gas lease application because it was not dated. The court held that, although the Department could require lease applications to be executed on a specific date, failure to date a lease application is a nonsubstantive error, which cannot result in the per se disqualification of the application, where the failure to date does not itself constitute evidence of fraud or other disqualification. The court noted that dating the signature was not an essential term and that, in any case, the Department could require an applicant after the drawing to prove that the application was signed and other qualifications to receive a lease were satisfied as of a particular qualifying date.

In the present case, we conclude that failure to disclose the identity of a filing service in accordance with 43 CFR 3112.2-4 is a substantive error, justifying the per se disqualification of a lease application. Despite appellants' assertion that there was no intent to defraud, failure to disclose the identity of a filing service, unlike failure to date an application, threatens the integrity of the simultaneous leasing system. We view the system as presently constituted, where failure to disclose the identity of a filing service results in the automatic rejection of the lease application, as a reasonable means to ensure that the system is not corrupted by undisclosed interests and/or multiple filings. As we said in Shaw Resources, Inc., 79 IBLA 153, 177-78, 91 I.D. 122, 135-36 (1984):

> [W]here an applicant * * * has failed to identify any party who gave assistance in preparing the application, * * * such applications are properly "rejected," priority is denied to any successful applications, and the filing fees are retained. * * * All of

> these requirements are directly related to the Department's ability to police the simultaneous system to prevent fraud or abuse and those who faile to observe them properly suffer the consequences of their failure to comply. [Footnote omitted.]

See also Irvin Wall, 69 IBLA 371, 374-75 (1983) (Burski, A.J. concurring). We have not hesitated in applying the Conway rationale in appropriate instances. See Richard W. Renwick (On Reconsideration), 78 IBLA 360 (1984) (inadvertent misdating of lease application treated as nonsubstantive error); Charles Fox and George H. Keith, Partnership, 77 IBLA 199 (1983) (incomplete reference to partnership as applicant on Part A application form treated as nonsubstantive error). However, there clearly are instances in which the Conway rationale is simply not applicable if the integrity of the simultaneous oil and gas leasing system is to be maintained. This is such an instance.

Therefore, we conclude that BLM properly rejected appellants' simultaneous oil and gas lease applications.

Pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are affirmed.

C. Randall Grant, Jr.
Administrative Judge

We concur:

James L. Burski
Administrative Judge

Bruce R. Harris
Administrative Judge.